



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

[File No. 101 0137]

Hertz Global Holdings, Inc; Analysis of Agreement Containing Consent Orders to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

DATES: Comments must be received on or before December 17, 2012.

ADDRESSES: Interested parties may file a comment at

<https://ftcpublic.commentworks.com/ftc/hertzdollarthriftyconsent> online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "Hertz, File No. 101 0137" on your comment and file your comment online at <https://ftcpublic.commentworks.com/ftc/hertzdollarthriftyconsent> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael R. Moiseyev (202-326-3106), FTC,

Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 15, 2012), on the World Wide Web, at <http://www.ftc.gov/os/actions.shtm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before December 17, 2012. Write “Hertz, File No. 101 0137” on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card

number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential,” as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).¹ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/hertzdollarthriftyconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!/home>, you also may file a comment through that website.

If you file your comment on paper, write “Hertz, File No. 101 0137” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission,

¹ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before December 17, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted from Hertz Global Holdings, Inc. ("Hertz"), subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement"), which is designed to remedy the anticompetitive effects resulting from Hertz's proposed acquisition of Dollar Thrifty Automotive Group, Inc. ("Dollar Thrifty"). Under the terms of the Consent Agreement, Hertz will divest its Advantage Rent A Car ("Advantage") business as well as the right to operate at 16 additional Dollar Thrifty on-airport locations at which Advantage does not yet operate to Franchise Services of North America, Inc. ("FSNA") and Macquarie Capital USA Inc. ("Macquarie") (collectively "FSNA/Macquarie"). Hertz will also divest 13 additional Dollar Thrifty on-airport locations to FSNA/Macquarie or another buyer, subject to the approval of the Commission, following the closing of its acquisition of Dollar Thrifty.

The proposed Consent Agreement has been placed on the public record for 30 days to

solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed Consent Agreement and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make it final.

Pursuant to an Agreement and Plan of Merger dated August 26, 2012, Hertz plans to acquire Dollar Thrifty for approximately \$2.3 billion. The Commission's Complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by lessening competition in the market for airport car rentals.

II. The Parties

Hertz, headquartered in Park Ridge, New Jersey, is a global supplier of automobile and equipment rentals and related products and services. The company provides car rentals to consumers at virtually every large or medium-sized commercial airport in the United States.

Dollar Thrifty is headquartered in Tulsa, Oklahoma, and supplies automobile rentals to customers throughout the United States and Canada. In the United States, Dollar Thrifty is present at most major airports, and it operates 86 company-owned airport locations.

III. The Relevant Product and Structure of the Markets

The acquisition threatens to harm competition in the airport car rental market. Airport car rentals consist of car rentals made to consumers at airport locations. Airport car rentals are a distinct relevant market because alternative modes of transportation, such as a taxis or buses, are not reasonable substitutes. Other forms of transportation do not provide the convenience, autonomy, or cost efficiency of renting a car, and, as a practical matter, customers are unlikely to turn to these alternative forms of transportation in response to a small but significant increase in airport car rental prices. There are two categories of airport car rentals: those made to individual customers; and contracted rentals that are available only to volume purchasers, such as corporate or government customers who have pre-negotiated car rental contracts and tour operators offering vacation packages. The competitive concerns associated with the proposed transaction are similar whether the market is viewed as an overall airport car rental market, or as a narrower one excluding rentals made pursuant to pre-negotiated rates and terms.

There are four major competitors operating in the airport car rental market: Hertz, which operates the Advantage and Hertz brands; Dollar Thrifty, which operates the Dollar and Thrifty brands; Avis Budget Group, Inc., which operates the Avis and Budget brands; and Enterprise Holdings, Inc., which operates the National, Alamo, and Enterprise brands. Market shares vary by individual airport, but on a national level these four firms account for approximately 98% of all U.S. airport car rentals.

The relevant geographic markets in which to evaluate the competitive effects of the acquisition are 72 individual airport locations:

- Albuquerque, New Mexico (Albuquerque International Sunport Airport)
- Atlanta, Georgia (Hartsfield-Jackson International Airport)

- Austin, Texas (Austin-Bergstrom International Airport)
- Baltimore, Maryland (Baltimore/Washington International Thurgood Marshall Airport)
- Boston, Massachusetts (Logan International Airport)
- Burbank, California (Burbank Bob Hope Airport)
- Burlington, Vermont (Burlington International Airport)
- Charleston, South Carolina (Charleston International Airport)
- Charlotte, North Carolina (Charlotte Douglas International Airport)
- Chicago, Illinois (Chicago Midway International Airport)
- Chicago, Illinois (Chicago O'Hare International Airport)
- Cincinnati, Ohio (Cincinnati/Northern Kentucky International Airport)
- Cleveland, Ohio (Cleveland Hopkins International Airport)
- Colorado Springs, Colorado (Colorado Springs Airport)
- Dallas, Texas (Dallas Love Field Airport)
- Dallas, Texas (Dallas/Fort Worth International Airport)
- Detroit, Michigan (Detroit Metro Airport)
- Denver, Colorado (Denver International Airport)
- Des Moines, Iowa (Des Moines Airport)
- El Paso, Texas (El Paso Airport)
- Fort Lauderdale, Florida (Fort Lauderdale-Hollywood Airport)
- Fort Myers, Florida (Southwest Florida International Airport)
- Fort Walton Beach, Florida (Fort Walton Beach Regional Airport)
- Harlingen, Texas (Valley International Airport)

- Hartford, Connecticut (Bradley International Airport)
- Hilo, Hawaii (Hilo International Airport)
- Honolulu, Hawaii (Honolulu International Airport)
- Houston, Texas (George Bush Intercontinental Airport)
- Houston, Texas (William P. Hobby Airport)
- Jacksonville, Florida (Jacksonville International Airport)
- Kahului, Hawaii (Kahului Airport)
- Las Vegas, Nevada (McCarran International Airport)
- Lihue, Hawaii (Lihue Airport)
- Los Angeles, California (Los Angeles International Airport)
- Louisville, Kentucky (Louisville International Airport)
- Manchester, New Hampshire (Manchester-Boston Regional Airport)
- Miami, Florida (Miami International Airport)
- Milwaukee, Wisconsin (Milwaukee International Airport)
- Minneapolis-St. Paul, Minnesota (Minneapolis-St. Paul International Airport)
- Nashville, Tennessee (Nashville International Airport)
- New York, New York (LaGuardia Airport)
- New York, New York (John F. Kennedy International Airport)
- Newark, New Jersey (Newark Liberty International Airport)
- Norfolk, Virginia (Norfolk International Airport)
- Oakland, California (Oakland International Airport)
- Oklahoma City, Oklahoma (Will Rogers World Airport)

- Omaha, Nebraska (Omaha Airport)
- Los Angeles, California (Ontario International Airport)
- Orange County, California (John Wayne Airport)
- Orlando, Florida (Orlando International Airport)
- Pensacola, Florida (Pensacola International Airport)
- Phoenix, Arizona (Sky Harbor Airport)
- Pittsburgh, Pennsylvania (Pittsburgh International Airport)
- Portland, Oregon (Portland International Airport)
- Providence, Rhode Island (T.F. Green Airport)
- Raleigh-Durham, North Carolina (Raleigh-Durham International Airport)
- Reno, Nevada (Reno-Tahoe International Airport)
- Richmond, Virginia (Richmond International Airport)
- Sacramento, California (Sacramento International Airport)
- Salt Lake City, Utah (Salt Lake City International Airport)
- San Antonio, Texas (San Antonio International Airport)
- San Diego, California (San Diego International Airport)
- Sanford, Florida (Orlando-Sanford International Airport)
- San Francisco, California (San Francisco International Airport)
- San Jose, California (Norman Y. Mineta San Jose International Airport)
- Sarasota, Florida (Sarasota Bradenton International Airport)
- Seattle, Washington (Seattle-Tacoma International Airport)
- Tampa, Florida (Tampa International Airport)
- Tulsa, Oklahoma (Tulsa International Airport)

- Washington, District of Columbia (Ronald Reagan National Airport)
- Washington, District of Columbia (Washington Dulles International Airport)
- West Palm Beach, Florida (Palm Beach International Airport)

IV. Entry

Neither new entry nor repositioning and expansion sufficient to deter or counteract the anticompetitive effects of the proposed acquisition is likely to occur within two years. A new entrant to the airport car rental market would face significant obstacles, as entering the airport car rental business on an efficient scale is both expensive and time-consuming. In order to compete effectively across geographic markets, a new entrant must have concession contracts in place that allow it to operate at each individual airport, establish brand identity, gain access to online travel agencies and other distribution channels, and be of a size sufficient to achieve economies of scale. Further, in order to draw customers, a new entrant would have to develop a reputation for quality and reliability, and it would take at least several years to acquire a reputation on par with the existing national firms. These entry barriers have limited existing fringe firms from expanding beyond their regional footprints and collective low single-digit market share. Accordingly, new entry would not be timely, likely, or sufficient to counteract the anticompetitive effects that would arise as a result of the acquisition.

V. Effects of the Acquisition

Hertz and Dollar Thrifty are two of four major competitors in markets for airport car rentals. By eliminating the substantial competition between Hertz and Dollar Thrifty, the proposed acquisition would cause consumers of airport car rentals to pay higher prices and experience reduced levels of service and slower innovation rates.

With only four suppliers of national significance, the markets for airport car rentals are already highly concentrated. In many instances, Hertz and Dollar Thrifty compete head-to-head for the sale of airport car rentals in each relevant market. Among other ways of competing with Dollar Thrifty, Hertz's low-priced Advantage brand is positioned similarly to Dollar Thrifty in terms of price, features, and customer service, and Hertz's incentive to continue to expand Advantage would be reduced significantly post-acquisition. The elimination of the direct current and future competition between Hertz and Dollar Thrifty would allow Hertz to increase prices, slow the pace of innovation, and/or decrease service levels. In addition, the fact that only three firms would own all of the most competitively significant brands after the proposed acquisition leads to an increased likelihood of coordination among the remaining competitors.

VI. The Consent Agreement

The proposed Consent Agreement resolves the acquisition's anticompetitive effects by requiring Hertz to divest its entire Advantage business as well as 16 additional on-airport locations to FSNA/Macquarie. This divestiture will effectively replicate the loss of current and future competition that would occur if Hertz acquires Dollar Thrifty. Also, by creating a new independently-owned competitor with a national footprint, the Consent Agreement effectively addresses the threat of increased coordinated interaction among the remaining competitors. The Consent Agreement also requires that Hertz divest 13 additional Dollar Thrifty airport concession agreements and related assets to a Commission-approved buyer, whether FSNA/Macquarie or another acquirer, within 60 days of the closing of the acquisition. This requirement further ensures that the acquisition will not harm competition in the airport car rental market.

FSNA/Macquarie possesses the resources and capability to acquire the divested assets and replace Dollar Thrifty as an effective competitor in the affected geographic markets. FSNA has

existing relationships with the major online travel agencies, has the IT infrastructure necessary to support the divested assets, and managers experienced in running a national airport car rental company. Macquarie is a global provider of banking, financial, advisory, investment and funds management services. Macquarie has committed substantial financial resources to the Advantage transaction, and it expects to provide additional growth capital as needed. FSNA/Macquarie's resources and expertise, together with the initial rental car fleet and other support terms contained in the Consent Agreement, will enable FSNA/Macquarie to compete effectively as the fourth largest rental car company in the country.

Pursuant to the Consent Agreement, FSNA/Macquarie will receive the assets necessary to replicate Advantage's airport car rental business, and this, coupled with the divestiture of the additional Dollar Thrifty airport concession agreements and related assets, remedies the unilateral and coordinated anticompetitive effects of the transaction. In addition to ensuring that employees of the businesses have the incentive to continue their employment with the acquirers, the Consent Agreement requires Hertz to provide FSNA/Macquarie with access to an initial rental car fleet and related support until FSNA/Macquarie can independently obtain its own fleet of cars. Combined, the Consent Agreement provisions ensure the benefits of competition that would otherwise have been lost through the acquisition will be maintained.

The Commission has appointed an interim monitor to oversee the divestiture of the assets after the Consent Agreement has been signed. In order to ensure that the Commission remains informed about the status of the proposed divestitures, the proposed Consent Agreement requires the parties to file periodic reports with the Commission until the divestiture is accomplished. If the Commission determines that Hertz has not fully complied with its obligations under the Decision and Order within ten days after the date the Decision and Order becomes final, the

Commission may seek civil penalties to ensure that Hertz remains in compliance.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order or to modify its terms in any way.

By direction of the Commission, Commissioner Rosch dissenting.

Donald S. Clark
Secretary.

[FR Doc. 2012-28517 Filed 11/23/2012 at 8:45 am; Publication Date: 11/26/2012]